

REMARKS

Claims 1-14 are pending. Claims 1, 6, and 11 are independent claims. Reconsideration and allowance of the above-referenced application are respectfully requested.

Claim 1 relates to a method of enhancing data delivery. A first packet is sent from a client interface to a remote terminal at a first time. A second packet is received at the client interface from the remote terminal at a second time. A response time of the remote terminal at the client interface is determined, where the response time is based on a time period between the first time and the second time. Using said response time, information related to a connection speed between the remote terminal and the client interface is determined. A plurality of different content versions is provided where each version has a different amount of information and each version is optimized for a specific connection speed. Based on the connection speed between the remote terminal and the client interface, a content version is automatically selected from the plurality of content versions and provided to the remote terminal.

Neither Banga nor Smith, taken alone or in combination, teach the features of claim 1. In support of the contention that Banga teaches "sending a first packet from a client interface to a remote terminal at a first time; receiving at the client interface a second packet from the remote terminal at a second time," as claimed, the Office cites Banga, col. 3, lines 22-36. The cited portion of Banga states:

In order for the remote proxy to be able to send the difference data to the local proxy, it must calculate the difference data by comparing the current page, once it is received at the remote proxy, to the version of the page already available at the local

proxy. That requires the remote proxy to know which version of the page is already present at the local proxy. This can be accomplished in several ways.

First, the remote proxy must cache at least one version of the page (if the page requested by the user has never been requested by any user connected to the remote proxy, there would be no alternative to waiting for the full current page to be received at the remote proxy and sending the entire page, except that it may be possible to begin sending the entire current page before it is completely received at the remote proxy). (Emphasis added).

See, Banga, col. 3, lines 22-36.

Thus, the cited portion of Banga teaches calculating the difference data between two versions of a page by comparing a current page to a version of the page already available at the local proxy. The cited portion of Banga does not teach sending a first packet or receiving a second packet, as described in claim 1. Instead, Banga teaches that at least one version of the page must be cached in order to compare the cached version with a current version to obtain the difference data. Neither does Banga send and receive a first packet and a second packet, respectively, nor does Banga perform the caching and comparison of versions of pages at a first time or a second time, as claimed. Consequently, Banga does not determine a response time of the remote terminal, as claimed.

Further, Banga does not need to determine a response time between two terminals because Banga does not rely on connection speed or response time between terminals to decide the version of the page that will be transmitted to the local proxy. In contrast, Banga relies on the availability and inexpensiveness of computational speed and ability at the user station when transmitting a page from a remote proxy to the local proxy. See, e.g., Banga, col. 3, lines 3-15. Therefore, the version of the page that Banga transmits to the local proxy is selected

based on the computational speed and ability of the user station, and not based on a connection speed determined from the response time.

The Office contends that Banga teaches "based on said determined connection speed, automatically selecting a content version from said plurality of content versions; and providing the remote terminal with the selected content version," as claimed. See, e.g., Banga, page 2, 2<sup>nd</sup> paragraph. This contention is respectfully traversed. Banga does not teach either that a connection speed is determined based on response time or that the version of the page transmitted to the local proxy is determined based on the determined connection speed, as claimed. Therefore, Banga certainly does not describe or suggest automatically selecting and providing a content version to the remote terminal based on said determined connection speed.

Further, the portion of Banga cited by the Office in support of this contention states:

The preferred embodiment of the difference data calculation technique described in the above-incorporated copending patent application outputs as a "side-effect" a compressed version of the original page data. This provides a compressed version of each page which can be stored in the cache in place of the uncompressed version, thereby increasing the number of pages that can be cached for a given cache size. Moreover, that technique produces difference data that at most total no more than a few bytes more than the new version of the data page. Therefore, if that preferred technique is used, then one may not need to abort the transmission of difference data, because there would be no penalty in not doing so. However, the discussion that follows is generic to any difference calculating technique that might be used, including one that may not be so efficient as the preferred technique. (Emphasis added).

See, col. 5, lines 32-47.

Thus, the cited portion describes a side-effect of Banga's technique that provides a compressed version of each page which can be stored in the cache in place of the uncompressed version, thereby increasing the number of pages that can be cached for a given cache size. The cited portion does not teach "based on said determined connection speed, automatically selecting a content version from said plurality of content versions," as claimed.

Further, the Office concedes that Banga does not teach "determining a response time of the remote terminal at the client interface based on a time period between the first time and the second time; using said time to determine information related to a connection speed between the remote terminal and the client interface." See, Office Action, page 2, last paragraph - page 3, first paragraph. In addition, contrary to the Office's contention, Banga does not teach "sending a first packet from a client interface to a remote terminal at a first time; receiving at the client interface a second time; ... based on said determined connection speed, automatically selecting a content version from said plurality of content versions; and providing the remote terminal with the selected content version," as recited in claim 1. At least for these reasons, Banga does not teach all the features of the claimed subject matter.

Smith does not rectify the deficiencies of Banga because Smith does not teach "providing a plurality of different content versions, each having a different amount of information, each content version being optimized for a specific connection speed, based on said determined connection speed," as claimed.

The Office appears to take the position that because Smith teaches that the client session can issue a test message to the

client and measure the period of time before a response time from the client is received, it would have been obvious to combine Banga and Smith. As discussed previously, because Banga does not describe all the features of the claimed subject matter and because Smith does not rectify the deficiencies in Banga, the suggested combination of Banga and Smith does not teach all the features of the claimed subject matter. Applicants respectfully submit that the Office does not adequately address Applicants' remarks in the reply to the Office Action filed on November 20, 2007, establishing that the suggested combination of Banga and Smith does not teach all the features of the claimed subject matter. In this regard, the Office does not identify portions of Banga that identify a first time, a second time, a response time, or portions of Smith that teach providing a plurality of different content versions, each having a different amount of information, each content version being optimized for a specific connection speed, based on said determined connection speed," as claimed. Therefore, a *prima facie* case of obviousness is not established because the references, taken alone or in combination, do not teach all the features of the claimed subject matter.

Further, the Office Action states:

Applicant argued that prior art did not disclose, "To choose between broadcasting either differential data or new data based on computational availability and speed at a user station or network travel time.

See, Office Action, page 5, 3<sup>rd</sup> paragraph.

In the reply to Office Action filed on November 20, 2007, Applicants presented remarks that because Smith does not describe preferably broadcasting the current state in differential form, and because Smith did not describe or suggest having to choose between broadcasting either differential data

or new data based on computational availability and speed at a user station or network travel time, the Office relies upon hindsight using the Applicants' own disclosure as a template to arrive at the determination of obviousness. Applicants respectfully submit that the Office does not provide an analysis regarding why it would have been obvious to combine Banga and Smith, as contended by the Office.

Rather than providing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, the Office makes conclusory statements that it would have been obvious to combine Banga and Smith to provide a data delivery mechanism which dynamically adjusts transmission rates to the speed at which a client can receive and process data while ensuring that updated data received by a client is current. See, e.g., Office Action, page 3, 3<sup>rd</sup> paragraph. Smith describes issuing a test message to a client and measuring the period of time before a response time from the client is received. Smith's determination of a response time will have no bearing on Banga's transmission of a version of a page to a local proxy because in Banga, the version transmitted depends upon the computational availability and speed at a user station. Because Smith's determination of the response time will have no bearing on Banga's transmission of a version of a page to a local proxy, Applicants respectfully submit that Applicants' own disclosure is being used as a template to conclude that the combination would have been obvious. Such conclusion of obviousness is based on hindsight reconstruction which is impermissible.

Furthermore, the Office appears to contend that because Smith taught a data delivery mechanism which dynamically adjusts transmission rates to the speed at which a client can receive and process data, the suggested combination of Banga and Smith

is obvious. Thus, as taught by Smith, it is the rate of transmission and number of outstanding data messages applied to the push thread that are adjusted in response to determining network travel time and client event processing speed. See, e.g., Smith, col. 17, lines 34-57. Banga teaches choosing to transmit either the new version or the difference data between the local proxy and the remote proxy. Thus, Banga does not describe or suggest adjusting transmission rates from the remote proxy to the local proxy depending on whether the new version or the difference data is transmitted to the local proxy. Therefore, the difference in size between the new version and the difference data as determined in Banga will not affect the rate of transmission as performed in Smith. Therefore, Smith's network travel time determination will have no bearing on Banga's page transmission. Regardless, neither Banga nor Smith teach that each content version is optimized for a specific connection speed, as claimed.

Applicants respectfully submit that the Office has still not provided clear articulation of the reasons why the suggested combination of Banga and Smith is obvious. In this regard, the Federal Register states:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting In re Kahn 41 stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See, Federal Register, Vol. 72, No. 195, pp. 57528-57529.

Thus, to support the conclusion that the suggested combination of Banga and Smith is obvious, the Office should

make explicit, the analysis supporting a rejection under 35 USC 103. Applicants respectfully submit that the Office makes conclusory statements regarding the Office's conclusion of obviousness and does not provide some articulated reasoning with some rational underpinning to support the conclusion of obviousness.

Thus, neither Banga nor Smith, taken alone or in any combination describe or suggest all features of claim 1. Accordingly, a *prima facie* case of obviousness is not established. Further, the proffered motivation to combine Banga and Smith amounts to reconstruction by hindsight using the Applicants' own disclosure as a template, which is impermissible. Furthermore, the Office has not provided any articulated reasoning with some rational underpinning to support the conclusion of obviousness. Therefore, Applicants respectfully request that the rejections under 35 USC 103 over the suggested combination of Banga and Smith be withdrawn.

Accordingly, claim 1 is allowable. Claims 2-5 are also allowable at least for reasons similar to claim 1 and for the additional recitations that they contain.

Claim 6 is allowable at least for reasons similar to claim 1. Claims 7-10 are also allowable at least for reasons similar to claim 6 and for the additional recitations that they contain.

Claim 11 is also allowable at least for reasons similar to claim 1. Claims 12-14 are also allowable at least for reasons similar to claim 11 and for the additional recitations that they contain.

#### CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or

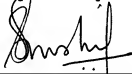


concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicants ask that all claims be allowed. Please apply any credits or charges to deposit account 06-1050.

Respectfully submitted,



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